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IN THE
Supreme Court of the United States

OCTOBER TERM, 1956.

No. ~~902~~ 103

CITY OF CHICAGO, A MUNICIPAL CORPORATION,

Petitioner.

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY COMPANY, ET AL.,

Respondents.

REPLY BRIEF OF CITY OF CHICAGO.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956.

No. 905.

CITY OF CHICAGO, A MUNICIPAL CORPORATION

Petitioner.

vs.

THE ATCHISON, TOPEKA AND SANTA FE RAIL-
WAY COMPANY, ^{ET AL.}

Respondents.

REPLY BRIEF OF CITY OF CHICAGO.

The opinion of this court issued May 13, 1957, in *Government Employees v. S. F. Windsor*, No. 423, prompts us to clarify the only issue in the City's petition for the writ of certiorari which, perhaps, has become obscure by Respondents' summary of the opinion and decision of the Court of Appeals.

The latest pronouncement of this Court to which we have referred follows the policy, which is now firmly fixed, that the Federal courts should not pass on constitutional questions where an authoritative interpretation of local law may avoid constitutional issues.

The Court of Appeals did not confine its judgment to the invalidity of only one section of Chapter 28 of the Chicago Code, relating to public passenger vehicles, as represented by counsel for Respondents. (Brief, p. 2.) It is not quite clear from the opinion of the Court of Appeals what part or parts of Chapter 28 are enforceable against Respondent,

Transfer. For instance, the Court concluded "that it was unnecessary for Transfer to apply for licenses under the 1955 ordinance, because the issuance thereof unlawfully required a consent by the city to the prosecution of Transfer's business and was not merely a step in the regulation thereof." (Appendix B, p. 64, City's Petition.) This conclusion is irreconcilable with the Court's statement: "If Transfer's vehicles do not conform to the requirements contained in the prior ordinance (Ch. 28, Chicago Municipal Code) the city may refuse to issue licenses for the non-conforming vehicles and penalize their unlicensed operation in accord with Sec. 28-32. So, also, whenever Transfer is found guilty of violating Sec. 28-17 the city may proceed against it according to the penalties section." (Appendix B, pp. 51-52, City's Petition.) However, this much is too obvious from the opinion of the Court of Appeals to cause doubt as to the ordinance which was held invalid—the Court frequently was critical of the "1955 ordinance" with special significance of Sec. 28-31.1, added by the ordinance of 1955. (Appendix B, pp. 48 to 53, City's Petition.)

The "1955 ordinance" amended Secs. 28-1 and 28-31 and added Secs. 28-31.1 and 28-31.2. (Appendix A, pp. 16, 34-36, City's Petition.) The Federal courts below undertook to interpret, or assumed, the "1955 ordinance" to be applicable to interstation transfer service.

Sec. 28-1 of the Ordinance defines "Terminal vehicle," as a public passenger vehicle independent of control by or obligation to any interstate carrier. Sec. 28-31 limits the area of operation of such vehicles *from* railroad terminal stations and steamship docks. Sec. 28-31.1 limits the number of licenses for such vehicles as public convenience and necessity may require. And Sec. 28-31.2 regulates the fare for such vehicles to a uniform rate in the permissive area of operation, or zone, regardless of the distance traveled.

The mere recital of the provisions of the "1955 ordinance" and the incongruities in the opinion of the Court of Appeals emphasize the necessity of a definitive determination of local law questions by the local courts, before the Federal courts undertake to pass upon constitutional questions which may never arise if the state courts should construe the "1955 ordinance" to be inapplicable to interstation transfer service, exclusively, as contended by Respondents in the District Court and the Court of Appeals. (*Government Employees v. S. F. Windsor*, No. 423-U, S. Supreme Court.)

Certainly Sec. 28-31.1 would not be invalid if Secs 28-1 and 28-31 were construed to be applicable only to local transportation operations from railroad terminal stations and steamship docks to points within the central business district of Chicago, as conducted by Parmelee.

Respectfully submitted,

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